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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,415	07/12/2001	Paul Goldman	OB-200	3576

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06/02/2003

EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/02/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

Office Action Summary	Application No. 09/904,415	Applicant(s) GOLDMAN	
	Examiner Cary E. O'Connor	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2003 and 21 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-21 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9, 13-21 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 10-12 and 27-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>9</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masden (3,971,136) in view of Amadera (4,906,187). Masden shows an oral care device comprising particulate (column 1, line 55), a handle 44, and a conduit 42 for supplying water, particulate and pressurized air 39 to the handle (see column 3, lines 4-6). The air supplied to the container serves two purposes: (1) to aerate the slurry and keep the particles in suspension and (2) to force the aerated slurry out of the outlet port by building up air pressure above the slurry. Masden does not include a toothbrush on the end of the handle or a switch for controlling the flow. Amadera shows an oral care device comprising a handpiece having a head with bristle (see Fig. 4) and a switch 14c located in the handpiece. As to claims 3-5, note that the conduit is located in the handle and the head (see Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide bristles and a switch on the handle of Masden, as taught by Amadera, in order to enhance the cleaning ability of the device

and enable the user to easily control the flow of the fluid. As to claims 3-5, note that the conduit of Amadera is located in the handle and the head (see Figure 4).

Claims 1, 3-6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (5,203,698) in view of Amadera (4,322,207). Blake shows an oral care device comprising an applicator 34 having a head 33 and a conduit 24 for supplying water particulate and pressurized air to the head. A switch 29 is included in the handle for controlling the water, particulate and pressurized air to the head. Amadera shows an oral care device wherein the head includes bristles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide bristle on the head of Blake, as taught by Amadera, in order to enhance the cleaning ability of the device. As to claim 26, note the water and slurry stored in the handle of Blake.

Claims 7, 8, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masden (3,971,136) in view of Hines (5,503,553). Masden shows, in Figure 6, an oral care device comprising an electric motor and air compressor (pump 108), an enclosed container 131 containing a slurry, a first conduit 115 for conducting compressed air from the compressor to the container, and a second conduit 126 from the container to an applicator 125. The air supplied to the container serves two purposes: (1) to aerate the slurry and keep the particles in suspension and (2) to force the aerated slurry out of the outlet port by building up air pressure above the slurry. Masden does not teach a housing for the pump and container. Hines shows an oral care device with a housing for containing the various components of the device. It would have been obvious to one of ordinary skill in the art at the time the invention was

Art Unit: 3732

made to provide the oral care device of Masden with a housing for containing the pump and container(s), in view of Hines, to make the device portable and neater looking.

Claims 14-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen (3,971,136) in view of Otani (5,387,182). Madsen shows an oral care device comprising an electric motor and air compressor (pump 108), an enclosed container 129, a first conduit 115 for conducting compressed air from the compressor to the container, and a second conduit 126 from the container to an applicator 125.

Madsen teaches delivering the compressed air at a pressure between 15-60 psi, which is effective to remove plaque. Otani shows an oral care device having a conduit of about two and a half feet long connected to the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second conduit of Madsen at least 24 inches long, as taught by Otani, so that the handle may easily reach all areas of the mouth.

Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen (3,971,136) in view of Hines (5,503,553) as applied to claim 7 above, and further in view of Blake (5,203,698). Madsen '136 discloses that the particles in the slurry may comprise plastic particles but does not disclose sodium bicarbonate or sodium laurel sulfate. Blake shows an oral care device that employs sodium bicarbonate as the abrasive material and sodium laurel sulfate as a wetting agent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the solution of Blake in the device of Madsen, in order to create a foam which controls the amount of abrasive that may be inhaled by the patient.

Allowable Subject Matter

Claims 10-12, 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Information Disclosure Statement

The information disclosure statement filed July 12, 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Apparently, the copies of the references cited in this IDS have been misplaced. While the examiner is able to obtain copies of the U.S. patents, the publication cited ("Microprophy™ Owner's Manual") is not available to the examiner. It is requested that applicant submit a copy of this publication so that the examiner can consider this document.

Response to Arguments

Applicant's arguments filed February 7, 2003 have been fully considered but they are not persuasive.

Applicant argues that it would not have been obvious to one of ordinary skill in the art to provide bristles on the head of Blake as taught by Amadera because the Blake's device would have to be redesigned to accommodate a toothbrush. The

examiner maintains that little or no modification of the Blake device would be necessary. Either the angle of the nozzle could be changed so that it is more or less coaxial to the axis of the canister, or bristles could be attached to the end as taught by Kamen et al (6,375,459). Either way would result in a usable device with little modification which is well within the skill of one in the art.

Applicant argues that Madsen '136 does not allow air to exit the container because the outlet is at the bottom of the container. However, it is held that one of the purposes of the air is to aerate the slurry and keep the particles in suspension. Accordingly, some air would inherently be entrained in the slurry upon its exit from the container.


Applicant's arguments with respect to claims 1, 3-6 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-Th, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-0858. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-2708 for regular communications and 703-308-2708 for After Final communications.

Art Unit: 3732

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
June 2, 2003